



An  
Bord  
Pleanála

## Inspector's Report ABP-317501-23

### Development

Retention of a café/takeaway trailer with external tables/seating, storage box and roof top signage and the change of use of part of a car park to use as a café/takeaway.

### Location

Two Birds Coffee, Dunnes Stores,  
Rathbeale Road, Swords, Co. Dublin,  
K67 HH36

### Planning Authority

Fingal County Council

### Planning Authority Reg. Ref.

F23A/0174

### Applicant(s)

Marnie & Me Limited.

### Type of Application

Planning Permission.

### Planning Authority Decision

Grant Permission.

### Type of Appeal

Third Party

### Appellant(s)

Rathbeale Road Residents  
Association.

### Observer(s)

No Observers.



**Date of Site Inspection**

10<sup>th</sup> of September 2023.

**Inspector**

Elaine Sullivan



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## **1.0 Site Location and Description**

- 1.1. The subject site is located in the car park of the Swords Shopping Centre off Rathbeale Road in Swords, County Dublin. Directly to the south of the site is Rathbeale Road with a small commercial development on the opposite side of the road. A terrace of houses facing onto Mooretown Avenue back onto the car park along its western boundary. The immediate area surrounding the site is commercial in nature with residential development to the west and south.

## **2.0 Proposed Development**

- 2.1. Planning permission is sought for the retention of a café / takeaway trailer with external tables and seating, storage box and roof top signage and for the change of use of part of a car park to use as a café / /takeaway.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

- 3.1.1. Planning permission was granted by the PA subject to 8 planning conditions which were standard in nature.
- 3.1.2. Condition No. 2 limited the duration of the permission to a period of three years and states the following,

*The development as described shall be approved for a temporary period of three (3) years only from the date of the final grant of planning permission. Upon expiry of this period the structure shall be removed, and the site reinstated to its original form unless the structures retention is permitted by reason of a future planning decision or on appeal by An Bord Pleanála.*

*REASON: In the interest of the proper planning and sustainable development of the area.*

### **3.2. Planning Authority Reports**

- 3.2.1. Planning Reports



The report of the Planning Officer, (PO), dated the 13<sup>th</sup> of June 2023 informed the decision of the PA and includes the following,

- The development proposal is generally considered to be acceptable within the LC zoning objective for the site.
- The PO notes that a separation distance of c. 33m is provided between the proposal and the nearest boundary wall to a residential garden. This is considered to be an adequate separation. In order to protect the amenity of the surrounding area the hours of operation should be restricted.
- Given the location and setting of the Swords Shopping Centre, the proposed development would not have a negative impact on the visual and residential amenity of the area.
- The PO recommends that a temporary grant of permission would be appropriate given the nature of the development.
- The concerns of the Transport Section regarding segregation from the main car park are noted and the PO recommends that they be dealt with by condition.

### 3.2.2. Other Technical Reports

- Transportation Planning Section – Concerns raised about the lack of segregation between the seating area and the existing car lane through the car park.
- Water Services – No objection.

### 3.3. Prescribed Bodies

- Uisce Eireann – No objection.

### 3.4. Third Party Observations

3.4.1. 2 third party observations received and raised the following issues,



- The coffee truck/caravan and associated signage, chairs, tables and plant pots cause visual clutter in the area.
- Noise and nuisance from the generator and customers impact on residential amenity.
- The location of the development encourages haphazard parking on the road.
- The area is well served with takeaway food and beverages.
- Concern regarding the term 'takeaway' in the application as it could relate to a range of other food.
- Danger to pedestrians.
- A tree was removed to improve visibility for the caravan.

## 4.0 Planning History

**PA Ref. 21/200A** – Enforcement file opened by the PA relating to the coffee trailer.

**ABP-300934-18, (PA Ref. F17A/0325)** – Planning permission granted on the 25<sup>th</sup> day of October 2018 for demolition works and alterations to existing library and supermarket.

## 5.0 Policy Context

### 5.1. Development Plan

- 5.1.1. The site is located within the administrative boundary of Fingal County Council. The operative Development Plan for the area is the Fingal County Development Plan, (FCDP), 2023-2029. The following sections of the KCDP are of relevance to the subject appeal.
- 5.1.2. The site is zoned 'LC' – Local Centre, the objective of which is to *'Protect, provide for and improve local centre facilities'*.

### 5.2. Natural Heritage Designations

- 5.2.1. No designations apply.



### 5.3. EIA Screening

- 5.3.1. Having regard to the nature and scale of the proposed development, it is considered that there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of appeal include the following:

- The coffee van commenced trading without permission and installed unauthorised seating and signage. The appellant also contends that a tree was removed to improve the visibility of the van.
- The van, signage and seating contribute to visual clutter in the area.
- The residential amenity of the nearby houses has been negatively impacted by the noise from the van, which includes noise from a generator and general noise from increased activity around the business.
- The coffee van also attracts vehicles to park on the public footpath and the busy road which causes an obstruction to residents.
- There is no requirement for a mobile coffee van as the area is well served by premises which cater for this purpose. A café was permitted under PL06F.245567, PA Ref. F15A/0024 and built in front of the library at JC Savage but remains empty.
- Planning permission is sought for a '*café/takeaway trailer*'. The appellant is concerned that the description of the development is ambiguous and that the word 'takeaway' covers an umbrella of 'takeaway' options and not just coffee.



## 6.2. Applicant Response

A response was received from the applicant on the 27<sup>th</sup> of July 2023 and includes the following:

- The appellant has not demonstrated that she has the support of the residents of Rathbeale Road and therefore the appeal should be dismissed under Section 138 of the Planning and Development Act 2000 (as amended) as it is without substance.
- The appellant's dwelling is quite distant from the coffee unit and there is no direct view from her property.
- The applicant notes that residents in the vicinity of the trailer have not expressed any issues with the coffee van and many are regular customers.
- The applicant states that the removal of a tree is the subject of an enforcement investigation and is not a matter for this appeal.
- Signage is required as the coffee unit is lower than the public footpath. However, the lettering is small and does not visually detract from the commercial environment.
- As noted in the report of the PO, the nearest residential back garden to the unit is 33m away, which the applicant considered to be sufficient to ensure against any impact on residential amenity.
- The applicant does not agree that the coffee unit causes 'enormous noise pollution' as stated in the appeal. The noise from the generator should be considered within the context of the commercial development.
- The operating hours of the coffee unit were in line with Dunnes Stores (Grocery) and were formalised in Condition No. 6 of the PA's decision and are satisfactory to the applicant.
- The applicant rejects the view that there is no requirement for the coffee unit, which caters to a niche market and has traded successfully for the past two years.



- The applicant does not agree that the unit contributes to hap-hazard parking and obstruction. By virtue of its location in a car park, there is no need to double-park.
- Under Condition No. 4 of the PA's decision, the use of the unit is restricted to that stated in the public notice. It is not intended to operate as a traditional takeaway such as a fish and chip shop and the food sold are snacks and pastries that are ancillary to the sale of coffee.

### **6.3. Planning Authority Response**

A response was received from the PA on the 28<sup>th</sup> of July 2023 and includes the following:

- The PA has reviewed the grounds of appeal and remains of the opinion that the proposed development is acceptable.
- The PA considers that appropriate conditions have been included to ensure the proposed development does not have a negative impact on the amenity of the area and the safety around the car parking area and coffee trailer.
- The development has been approved for a period of three years. Upon expiry of this period the structure should be removed and the site reinstated unless the structure is retained by a future planning decision or an appeal by An Bord Pleanála.

### **6.4. Observations**

- No observations.

## **7.0 Assessment**

7.1. Having examined the application details and all other documentation on file, and inspected the site, I consider that the main issues in this appeal can be addressed under the following headings:

- Principle of Development
- Impact on Residential Amenity



- Appropriate Assessment

## **7.2. The Principle of Development**

- 7.2.1. The subject site is zoned 'LC', the objective of which is to *'Protect, Provide for, and/or Improve Local Centre Facilities'*. Among the uses listed as 'Permitted in Principle' in the 'LC' zoning, are Restaurant/Café and Fast-Food Outlet/Take-Away. I am satisfied that the proposed development for a mobile coffee trailer is acceptable in principle and would be compatible with the local centre zoning objective for the site.

## **7.3. Impact on Residential Amenity**

- 7.3.1. The grounds of appeal focus mainly on the impact of the proposal on existing residential amenity in terms of noise, nuisance, visual clutter and traffic. The appellant also alleges that unauthorised development may have occurred which relates to the removal of a tree. The issue of unauthorised development is a matter for the PA and is outside of the scope of this appeal.
- 7.3.2. Having visited the site and reviewed the documentation, I am satisfied that the proposed development would not have any significant negative impact on the residential amenity of the area. In terms of visual impact, no houses face onto the site and the surrounding environment is not visually sensitive. The coffee trailer is small in scale and is partially screened from public road by a low boundary wall and by the difference in levels between the public footpath and the site. An ESB box and two upright cabinets with advertising are positioned on the public footpath behind the trailer. These structures are higher than the trailer and are more visually prominent than the trailer. The projecting signage on the roof is small in scale with lettering of just 350mm in height.
- 7.3.3. Given the nature of the development, some noise may be emitted from a generator. However, I am satisfied that it would not be of such a level to result in a significant nuisance to the nearest houses, which are approximately 33m to the west of the site on Mooretown Avenue. The application states that the trailer will be in operation



during daytime hours only, which will mitigate against any possible nuisance from noise.

- 7.3.4. As the development is located within a car park, with ample parking, I do not see how it could contribute to hap-hazard parking on Rathbeale Road or to any traffic impacts. The concerns of the PA regarding the provision of adequate separation between the seating area and the car parking area are noted and can be dealt with through a planning condition.
- 7.3.5. The applicant argues that there is a need for the type of takeaway offer that the trailer would provide, and I would agree that the trailer provides a different kind of offer to that of a traditional sit-down café. The requirement for the business would be a commercial decision and the main planning issues are whether it is a suitable use for the site. I am satisfied that the proposed development is in keeping with the commercial nature of the site and that it would not be out of context with the surrounding environment. The development would not result in any undue negative impact on existing residential amenity by virtue of its nature and scale, and the separation distance between the nearest houses. I agree with the opinion of the PO that it is appropriate to limit the time period of the permission by virtue of the temporary nature of the coffee trailer.

#### **7.4. Appropriate Assessment**

- 7.4.1. Having regard to the nature and scale of the proposed development within a serviced urban area and separation distance to the nearest European site, no Appropriate Assessment issues arise, and it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects on a European site.

### **8.0 Recommendation**

- 8.1. I recommend that planning permission be granted.



## 9.0 Reasons and Considerations

- 9.1.1. Having regard to the nature and scale of the proposed development, for a mobile coffee trailer in a commercial car park, it is considered that subject to the conditions set out below, the proposed development would be in accordance with the policies and objectives of the Fingal County Development Plan 2023-2029 and would not seriously injure the visual or residential amenities of the area. The proposed development would, therefore, be in accordance with the LC zoning for the site and with the proper planning and sustainable development of the area.

## 10.0 Conditions

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| 1. | <p>The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p><b>Reason:</b> In the interest of clarity.</p> |
| 2. | <p>The development hereby approved shall be restricted to a period of three (3) years only from the date of the final grant of permission. Upon expiry of this period the structure shall be removed, and the site reinstated to its original form unless permitted by a further planning permission.</p> <p><b>Reason:</b> In the interest of proper planning and sustainable development of the area.</p>  |
| 3. | <p>Notwithstanding the exempted development provisions of the Planning and Development Regulations, 2001, (as amended), and any statutory provision amending or replacing them, the use of the proposed development shall be restricted to café/takeaway trailer (as specified in the</p>  |



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|    | <p>lodged documentation), unless otherwise authorised by a prior grant of planning permission.</p> <p><b>Reason:</b> In the interest of residential amenity.</p>   |
| 4. | <p>The hours of operation shall be between 08.30 hours and 16.00 hours Monday to Sunday and on Bank Holidays.</p> <p><b>Reason:</b> In the interest of the residential amenities of property in the vicinity.</p>  |
| 5. | <p>Details of how the applicant intends to provide adequate segregation between the seating area and the car park lane shall be submitted to the planning authority for their written agreement within 4 weeks of the date of the final grant of permission. The agreed proposal shall be implemented within 8 weeks of the final grant of permission.</p> <p><b>Reason:</b> In the interest of proper planning and sustainable development of the area.</p> |
| 6. | <p>Water supply and drainage arrangements, including the disposal of surface water, shall comply with the requirements of the planning authority for such works.</p> <p><b>Reason:</b> To ensure adequate servicing of the development, and to prevent pollution.</p>  |
| 7. | <p>Waste management arrangements, including the storage, collection and segregation of waste for recycling and recovery shall comply with the requirements of the planning authority for such works.</p> <p><b>Reason:</b> To ensure adequate servicing of the development, and to prevent pollution.</p>  |

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.



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.Elaine Sullivan  
Planning Inspector

10<sup>th</sup> day of September 2023